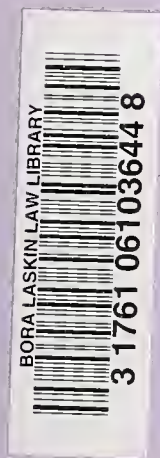




UNIVERSITY OF
TORONTO
FACULTY OF LAW



JUDGMENT IN LAW AND POLITICS

Fall 2010

Professor Jennifer Nedelsky

Faculty of Law
University of Toronto

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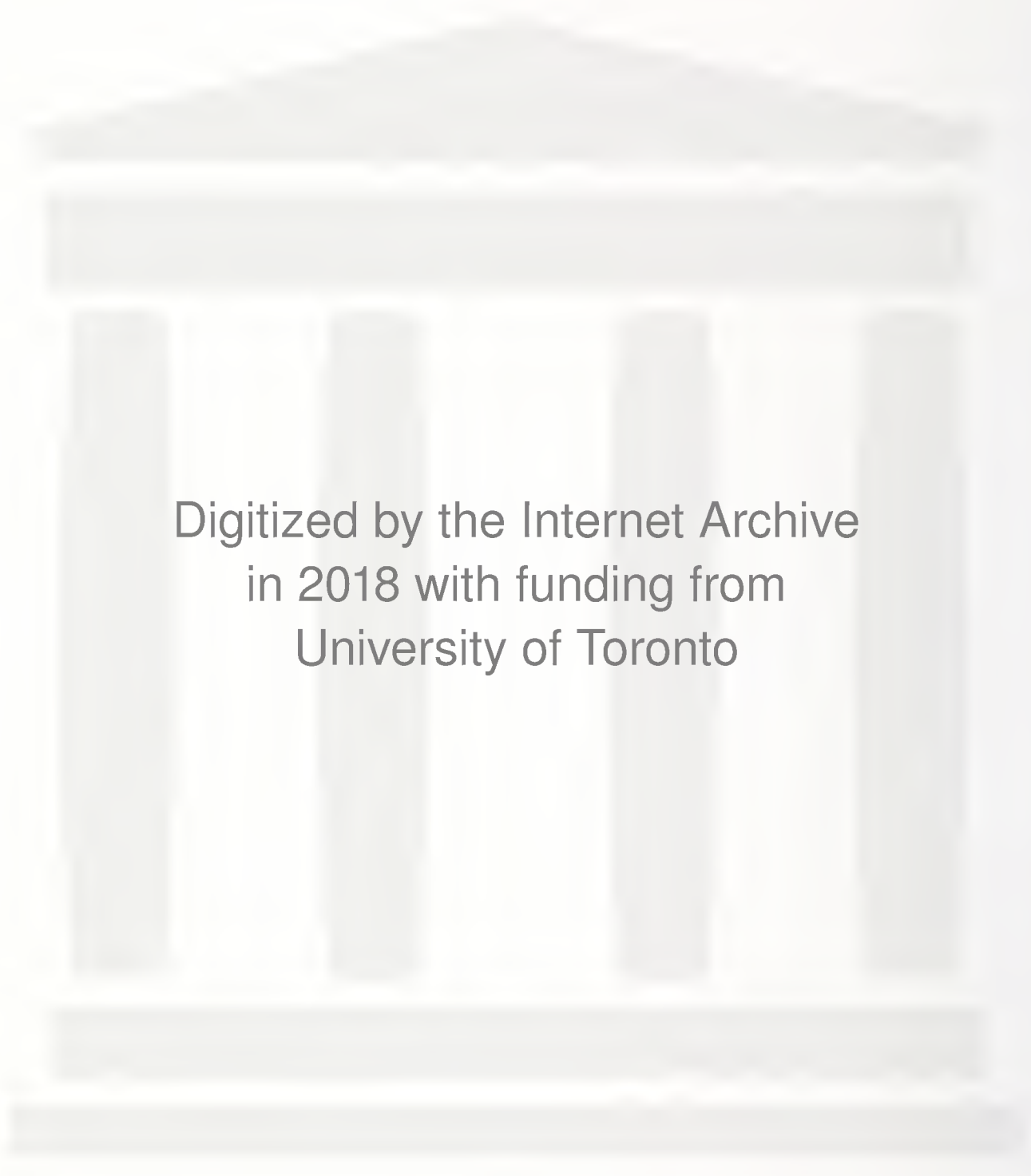
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JUDGEMENT SEMINAR

POL 2023; LAW 372H1S

FALL 2010

Tuesday 2-4

PROFESSOR NEDELSKY

Office hours: Tuesday **4:00 – 5:30** or by appointment, Flavelle 318,
e-mail j.nedelsky@utoronto.ca

Assistant: Aleatha Cox, aleatha.cox@utoronto.ca, telephone 416-946-8310.

This course explores the nature of the human faculty of judgement. We will be looking at the connections and differences between the judgements we make every day (is it a good course, book, movie) and moral, political and legal judgements.

There are two different kinds of problems our exploration will try to address. The first arises out of feminist theory, critical legal theory and a variety of other contemporary approaches to law. In all of these approaches that has been an emphasis on the importance of recognizing the multiplicity of different "voices" in our diverse society. Our legal system, like all of our institutions, has presupposed an unitary framework of discourse to which all who want to participate must conform. The call to recognize difference and make it possible to everyone's voice to be heard is a positive move. But it poses problems that are still to be worked out. A judge can adjudicate between two sides of a story when the story has a recognizable unity, that is when both sides have fit into a common framework. But if we no longer try to force diverse perspectives into the dominant framework, judges will be faces with truly incommensurable stories. (This already sometimes happens in cases of rape, sexual harassment and "hate speech.") How are we to judge between them? A related question arise with respect to the conventional virtues of judicial judgment: neutrality, impartiality, objectivity. What becomes of these virtues, how do we need to reconceptualize them, when we recognize the role of passion in knowledge and the inevitability of perspective in understanding? A large part of the project of the course is to see the ways philosophical writings on the nature of judgement may be able to help us solve these pressing problems. Two of the common themes that link the philosophical and contemporary legal arguments are the role of story telling or narrative and the role of common sense in judgement.

The second problem is a long standing one: is there something distinctive about the legal form of judgement that justifies (or requires) the institutional forms we have developed for judicial decision making. This problem involves not only the "undemocratic" nature of courts, but the particular norms of discourse that we think of as "legal." If we have a better understanding of what judging consists of, and what foster good judgement, then we can do a better job of thinking about the appropriate institutions, norms and practices of law. Since many of the readings address themselves to the question of political and moral judgement, we will have to ask whether there is reason to believe that legal or judicial judgement involves something different.

COURSE REQUIREMENTS:

The course will use **BLACKBOARD**. Students will need both to self enrol and to provide my assistant with your names and student numbers so that you can all be enrolled onto the law site. **EVERY STUDENT SHOULD SEND AN E-MAIL TO aleatha.cox@utoronto.ca SAYING THAT YOU ARE IN THE JUDGMENT CLASS.** This way she will be sure to have accurate e-mail addresses to create a class list.

Class participation and bi-weekly one page "comments" (25%) . Comments are due at 5:00 PM the Sunday before class, responses by noon Monday.

The core of the course will be the discussions of the assigned reading each week. To structure and facilitate an informed discussion, students will be required to write "Comments" on the readings, and "Responses" to other students' comments.

Students will be organized into 4 groups. Each week, each of the students from one of the groups is responsible for posting a 1-2 page commentary on the reading. (The groups for each week are marked on the syllabus.) Students doing responses should post their intention to respond to a particular comment as soon as they have selected it so that, ideally, each of the "comments" will get a response (as opposed to having a cluster of responses to one comment, and none for the others).

ALL students should read the comments and responses.

The **COMMENTS** should be your reflections on the reading in light of the ongoing conversation in the course. Thus students are encouraged not only to comment on what they find particularly interesting, important or troubling in the readings, but how this connects to previous readings and to the ongoing dialogue. Students from one other group are required to post "**RESPONSES**" to one of the comments. Responses are your thoughts, reflections, and reactions to the comments. They should be between a half a page and one page.

LATE COMMENTS OR RESPONSES WILL NOT BE ACCEPTED, but if you are unable to attend class on a day your comment or response is due, you should do the comment or response for another class. This way I can incorporate your written submissions into the class discussion, which is harder if you are not there to participate in the conversation. If for any reason you cannot do a comment or response for the date assigned to your group, you can do it on another week when you will not otherwise be doing a comment or response. Send an e-mal to let me know.

These weekly comments and responses will form a part of the class participation mark. Students will receive their "comments" back with very brief remarks and a grade. The responses (which are recorded, but not graded) and regular class discussion will constitute the rest of the participation mark.

PAPER: 25 page paper (75%) (Due December 20, 10:00 AM)

The paper will focus on 3 or 4 of the readings, connecting them to each other and to the main themes of the course. Students should show how together they contribute to these themes, or develop a particular problem related to these themes, and use the articles to work the problem through, or show how the insights of these articles help us better understand a particular concrete case or problem. If you are using an example not drawn from the course material, be sure you do not spend too much space presenting the example. A maximum of 2-3 pages. If you find you cannot present the example you have in mind within that space, you may use additional pages. But then you will need to add those additional pages to the total length of the paper, so that you still have at least 22 pages of analysis, integrating the example into your discussion of the texts and the key issues. A similar approach applies to using material outside the assigned reading. You are, of course, welcome to note other material that adds to your argument. But if you spending more than a few lines referring to that material, you should ensure that you still have the required page length devoted to the analysis of the texts and issues in the course.

Papers must be submitted to turnitin.com

BY THE LAST CLASS, STUDENTS SHOULD SUBMIT A PARAGRAPH SUMMARY OF THEIR PAPER TOPIC AND THE TEXTS THEY WILL FOCUS ON, OR AN OUTLINE OF THE PAPER WHICH IDENTIFIES THE TEXTS. STUDENTS MAY SUBMIT THIS SUMMARY OR OUTLINE EARLIER, BUT I RECOMMEND THAT IF YOU DO SO YOU AT LEAST SKIM ALL THE MATERIALS SO YOU WILL KNOW WHICH WILL WORK BEST FOR YOUR TOPIC.

REQUIRED READING: Materials to be purchased through the Law School Bookstore and, Ronald Beiner and Jennifer Nedelsky, eds. *Judgment, Imagination and Politics* (Rowman & Littlefield, 2001) Available at the Toronto Women's Bookstore, Harbord Street just west of Spadina.

Because the term is one week shorter this year, to even out assignments for comments and responses, **GROUPS 3 AND 4 must pick one additional week to write a comment on the readings (on a day they are not doing a response). and GROUP 1 must pick one additional week to write a response (on a day they are not doing a comment).**

Week 1 14/09	Introduction
Week 2 21/09	<p>Hannah Arendt, "The Crisis in Culture" Part II, (Part I optional) in Beiner and Nedelsky eds., <i>Judgment, Imagination and Politics</i> (Rowman & Littlefield, 2001) <u>(noted as JIP)</u></p> <p>Nedelsky, SSHRC Proposal (in materials (M))</p> <p><i>R v. R.D.S.</i>, [1997] S.C.J. No. 84. (M)</p> <p>Come to class with an example of a problem of judgement and thoughts on how these preliminary readings help us reflect on it.</p> <p>Group 1, comment; Group 2, respond</p>
Week 3 28/09	Linda M. G. Zerilli, <i>Feminism and the Abyss of Freedom</i> (Chicago: The Chicaco University Press, 2005) at c.4. (M)

	Group 2 comment, group 3 respond
Week 4 05/10	<p>Hannah Arendt, <i>Lectures on Kant's Political Philosophy</i> ed. By Ronald Beiner (Chicago: Chicago University Press, 1992) at vii - 51. (M)</p> <p>Immanuel Kant, <i>The Critique of Judgment</i> trans. by Werner Pluhar (Indianapolis: Hackett Publishing, 1987) s 6-8.. (M)</p> <p>Group 3 comment, group 4 respond</p>
Week 5 12/10	<p>Hannah Arendt, <i>Lectures on Kant's Political Philosophy</i> ed. By Ronald Beiner (Chicago: Chicago University Press, 1992) at 51-85. (M)</p>
Week 5 (cont'd)	<p>Leora Y. Bilsky, "When Actor and Spectator Meet in the Courtroom: Reflections on Hannah Arendt's Concept of Judgment" in JIP at c.13.</p> <p>Group 4 comment, group 1 respond.</p>
Week 6 19/10	<p>Ronald Beiner, "Rereading Hannah Arendt's Kant Lectures" in JIP at c.5.</p> <p>Jennifer Nedelsky, "Judgment, Diversity and Relational Autonomy" in JIP at c.6</p> <p>Immanuel Kant, <i>The Critique of Judgment</i> trans. by Werner Pluhar (Indianapolis: Hackett Publishing, 1987) at s 31-42. (M)</p> <p>Group 1 comment, group 2 respond ATTENTION: HEAVY READING, START EARLY</p>
Week 7 26/10	<p>Seyla Benhabib, "Judgment and the Moral Foundations of Politics in Hannah Arendt's Thought" in JIP at c.10.</p> <p>Iris Marion Young, "Asymmetrical Reciprocity: On Moral Respect, Wonder, and Enlarged Thought" in JIP at c.11.</p> <p>Group 2 comment, group 3 respond</p>
	<p>LAW READING WEEK Nov 1-5 OPTIONAL READING Steven L. Winter, <i>A Clearing in the Forest: Law, Life, and Mind</i> (Chicago: The University of Chicago Press, 2001) at xi-xvii, 295-357. (M)</p>
Week 8 09/11	<p>Ronald Beiner, "Rereading Truth and Politics" (2008) 34:1-2 <i>Philosophy & Social Criticism</i> 123 at note 17 (M)</p> <p>Kim Lane Scheppele, "Manners of Managing the Real" (Autumn 1994) 19:4 <i>Law & Social Inquiry</i> 995. (M)</p> <p>Group 3 comment, group 4 respond</p>
Week 9	Jennifer Nedelsky, "Embodied Diversity: Challenges to Law" in JIP at c.12.

16/11	<p>(M)</p> <p>Jennifer Nedelsky, "Communities of Judgment" (2000) 1:2 <i>Theoretical Inquiries in Law</i> 1, online: http://www.bepress.com/til/default/vol1/iss2/art1</p> <p>(M)</p> <p>Group 4 comment, group 1 respond</p>
Week 10 23/11	<p>Onora O'Neill, <i>Constructions of Reason: Explorations of Kant's Practical Philosophy</i> (New York: University of Cambridge Press, 1990) c 9. (M)</p> <p>Barbara Herman, "The Practice of Moral Judgment" (august 1985) 82:8 <i>The Journal of Philosophy</i> 414.(M)</p> <p>Group 1 comment, group 2 respond</p>
Week 11 30/11	<p>Albrecht Wellmer, "Hannah Arendt on Judgment: The Unwritten Doctrine of Reason" in JIP at c.9.</p>
Week 11 (cont'd)	<p>Group 2 comment, group 3 respond</p> <p>Group 4 write a response that offers closing reflections on some of the issues of the course.</p>
Week 12 01/12	<p>Group 3 comment, group 4 respond</p> <p>Closing reflections: Group 4, group 1 respond</p>

Judgment in Law and Politics: Table of Contents

1. Nedelsky, SSHRC Proposal.....	1
2. <i>R. v. R.D.S.</i> , [1997] S.C.J. No. 84	8
3. Zerilli, <i>Feminism and the Abyss of Freedom</i> , c. 4	51
4. Arendt, <i>Lectures on Kant's Political Philosophy</i> , vii-51.....	71
5. Kant, <i>The Critique of Judgment</i> , s. 6-8.....	98
6. Arendt, <i>Lectures on Kant's Political Philosophy</i> , 51-85.....	103
7. Kant, <i>The Critique of Judgment</i> , s. 31-42	121
8. Winter, <i>A Clearing in the Forest: Law, Life and Mind</i> , xi-xvii, 295-357	136
9. Beiner, "Rereading Truth and Politics"	172
10. Schepple, "Manners of Managing the Real"	186
11. Nedelsky, "Communities of Judgment"	214
12. O'Neill, <i>Constructions of Reason: Explorations of Kant's Practical Philosophy</i> , c. 9.....	252
13. Herman, "The Practice of Moral Judgment"	264